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IN THE SUPREME COURT OF THE STATE OF IDAHO

2004 Opinion No. 55

G. DAVID REARDON, a married man,)	
)	
Plaintiff,)	
)	
and)	
)	Docket No. 29120
MAGIC VALLEY SAND AND GRAVEL,)	
INC.,)	SUBSTITUTE OPINION
)	THE COURT'S PRIOR OPINION
Plaintiff-Appellant,)	DATED
)	FEBRUARY 26, 2004 IS HEREBY
v.)	WITHDRAWN.
)	
CITY OF BURLEY, a municipal corporation)	
and the COUNTY OF CASSIA,)	
)	
Defendants-Respondents.)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Cassia County. Hon. Monte B. Carlson, District Judge.

The judgment of the district court is vacated and remanded.

Marcus, Merrick, Christian & Hardee, L.L.P., Boise, for appellant. Michael R. Christian argued.

Parsons, Smith & Stone, Burley, for respondent, City of Burley. Randolph C. Stone argued.

Alfred E. Barrus, Cassia County Prosecutor, Burley, for respondent, County of Cassia. Did not participate in the appeal.

This case came to the Idaho Supreme Court from the district court's order denying Magic Valley Sand and Gravel, Inc. (Magic Valley) attorney fees pursuant to Idaho Code § 12-117. Magic Valley sued the City of Burley (City) and County of Cassia (Cassia) for enacting ordinances that zoned Magic Valley's property as residential. Magic Valley argued, and the district court agreed, that the City and County ordinances violated the Idaho State Constitution and the Local Land Use Planning Act. However, the district court ultimately held the ordinances inapplicable to Magic Valley.

Based on this decision, Magic Valley asked the district court for an award of attorney fees pursuant to I.C. § 12-117. Magic Valley argued it was entitled to attorney fees because it satisfied the requirements of I.C. § 12-117, which requires (1) a prevailing party; and (2) a showing that the state agency acted without a reasonable basis in fact or law when enacting, for example, zoning ordinances.

Although the district court found in favor of Magic Valley, it did not award Magic Valley attorney fees because it concluded the City and County did not act without a reasonable basis in fact or law when they enacted a series of ordinances.

Because Magic Valley is the prevailing party and because the County did not act with a reasonable basis in fact or law, the district court order denying Magic Valley's request for attorney fees pursuant to I.C. § 12-117 is vacated and remanded for a hearing to determine the amount of attorney fees Magic Valley is to be awarded from the County. Magic Valley's request for attorney fees on appeal, pursuant to I.C. § 12-117, is granted. Costs to Magic Valley on appeal.